



## 1995 SENATE BILL 474

January 3, 1996 – Introduced by Senator WINEKE, cosponsored by Representatives BOYLE, NOTESTEIN, TURNER, KRUSICK and BALDWIN. Referred to Committee on Health, Human Services and Aging.

1     **AN ACT** *to renumber* 48.715 (3); *to amend* 48.65 (1), 48.715 (4) (a), 48.715 (5),  
2             48.76 and 48.77; and *to create* 48.652, 48.715 (3) (b), 48.715 (3) (c) and 48.981  
3             (7) (a) 13m of the statutes; **relating to:** the registration of unregulated day care  
4             providers, fraudulent misrepresentation that a person is licensed to operate a  
5             day care center and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

Under current law, subject to certain exceptions, a person who for compensation provides care and supervision for children under the age of 7 for less than 24 hours a day (day care services) must be licensed by the department of health and social services (DHSS) to operate a day care center if the person provides day care services for 4 or more children. Also under current law, a person who contracts with a county department of human services or social services (county department) to provide day care services for any number of children must be certified by the county department according to standards adopted by DHSS. Finally, under current law, a school board may establish or contract for the provision of day care services. Currently, any person who provides day care services and who is not required to be licensed or certified and who is not established or contracted for by a school board is not subject to regulation by DHSS or a county department (unregulated day care provider).

This bill permits a county board of supervisors (county board) to enact an ordinance requiring all unregulated day care providers in the county to register with the county department or a private, nonprofit organization designated by the county board (registration agency) before providing day care services. To register as an unregulated day care provider, a person must provide certain information and documentation to the registration agency including: 1) the names of all persons residing at the premises in which the day care services will be provided and of all persons who will be providing day care services for the unregulated day care provider and a state-

ment that none of those persons is subject to a pending criminal charge, or has been convicted of any offense, the circumstances of which substantially relate to the care of children or to placing children at risk of abuse or neglect; 2) the address of the premises at which the day care services will be provided; 3) the days and hours of operation of the unregulated day care provider; 4) not less than 2 references addressing the unregulated day care provider's qualifications and suitability for providing day care services; 5) a security deposit and registration fee; and 6) any other information or materials that the county board may require. Before registering an unregulated day care provider, a registration agency must determine whether any person residing at the premises in which the day care services will be provided or any person who will be providing day care services for the unregulated day care provider has been determined under the child abuse reporting law to have abused or neglected a child.

Under the bill, a registration agency may revoke the registration of an unregulated day care provider under any of the following circumstances:

1. If on 2 or more occasions within the previous 5 years the unregulated day care provider has provided day care services for 4 or more children without obtaining a license from DHSS.

2. If the county department determines after an investigation under the child abuse reporting law that a person residing at the premises in which the day care services are provided or a person who provides day care services for the unregulated day care provider has abused or neglected a child and continues to reside in those premises or continues to provide those day care services.

3. If a person residing at the premises in which the day care services are provided or a person who provides day care services for the unregulated day care provider is subject to a pending criminal charge, or has been convicted of an offense, the circumstances of which substantially relate to the care of children or to placing children at risk of abuse or neglect and that person continues to reside in those premises or continues to provide those day care services.

Also under the bill, an unregulated day care provider who is not registered as required under the bill may be fined not more than \$500 or imprisoned for not more than one year in the county jail, or both, and is subject to an injunction preventing and restraining the unregulated day care provider from providing day care services without being registered. The penalties and injunctions provided under the bill are the same as those provided under current law for a person who for compensation provides day care services for 4 or more children without obtaining a license from DHSS.

Finally, under the bill, no person may fraudulently misrepresent himself or herself as being licensed to operate a day care center. Under the bill, any person who provides care and supervision for less than 4 children, not including that person's own children, while fraudulently misrepresenting himself or herself as being licensed to operate a day care center is subject to a forfeiture of not less than \$300 and an order to provide written notice of that fraudulent misrepresentation to the parent, guardian or legal custodian of each child receiving care and supervision from the unlicensed person. A person who provides care and supervision for 4 or more children, not including that person's own children, while fraudulently misrepresenting him-

self or herself as being licensed to operate a day care center is subject to a forfeiture of not less than \$500 plus the notification requirement. If on 2 or more occasions within the previous 5 years a person fraudulently misrepresents himself or herself as being licensed to operate a day care center, DHSS must refer that person to the district attorney for criminal prosecution and the institution of an injunction proceeding to restrain any continued unlicensed operation. DHSS may deny a day care center license to any person who within the previous 5 years has fraudulently misrepresented himself or herself as being licensed to operate a day care center.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 48.65 (1) of the statutes is amended to read:

2           48.65 (1) No person may for compensation provide care and supervision for 4  
3 or more children under the age of 7 for less than 24 hours a day unless that person  
4 obtains a license to operate a day care center from the department and no person may  
5 fraudulently misrepresent himself or herself as being licensed under this subsection.

6 To obtain a license under this subsection to operate a day care center, a person must  
7 meet the minimum requirements for a license established by the department under  
8 s. 48.67 and pay the license fee under sub. (3). A license issued under this subsection  
9 is valid for 2 years after the date of issuance, unless sooner revoked or suspended.

10           **SECTION 2.** 48.652 of the statutes is created to read:

11           **48.652 Unregulated day care registration. (1)** In this section:

12           (a) “Day care provider” means a person who provides day care services for com-  
13 pensation.

14           (b) “Day care services” means care and supervision for children under the age  
15 of 7 for less than 24 hours a day.

16           (c) “Unregulated day care provider” means a day care provider other than a per-  
17 son specified in s. 48.65 (2) or a person who holds a license under s. 48.65 or 48.69,

1 who is certified under s. 48.651 or who is established or contracted for under s. 120.13  
2 (14).

3 **(2)** (a) A county board may enact an ordinance requiring all unregulated day  
4 care providers in the county, including those located in any city or village in the  
5 county, to register under sub. (3) before providing day care services. An ordinance  
6 enacted under this paragraph shall be in strict conformity with this section.

7 (b) A county board may by resolution designate the county department or a pri-  
8 vate, nonprofit organization that is located in the county as a registration agency to  
9 administer this section.

10 **(3)** (a) An unregulated day care provider shall provide all of the following to  
11 the registration agency when registering as an unregulated day care provider:

12 1. The names of all persons residing at the premises in which the unregulated  
13 day care provider will provide day care services and the names of all persons who will  
14 be providing day care services for the unregulated day care provider.

15 2. The address of the premises in which the unregulated day care provider will  
16 provide day care services.

17 3. The days and hours during which the unregulated day care provider will pro-  
18 vide day care services.

19 4. Not less than 2 signed, written references addressing the unregulated day  
20 care provider's qualifications and suitability for providing day care services.

21 5. Subject to ss. 111.321, 111.322 and 111.335, a signed, written statement by  
22 the unregulated day care provider that no person residing at the premises in which  
23 the unregulated day care provider will be providing day care services is subject to a  
24 pending criminal charge, or has been convicted of any felony, misdemeanor or other

1 offense, the circumstances of which substantially relate to the care of children or to  
2 placing children at risk of abuse or neglect.

3 6. A security deposit of \$15 and a registration fee in an amount to be determined  
4 by the county board by ordinance.

5 7. Any other information or documentation that the county board may require  
6 by ordinance.

7 (b) Before registering an unregulated day care provider, a registration agency  
8 shall determine whether any person residing at the premises in which the unregulat-  
9 ed day care provider will be providing day care services or any person who will be  
10 providing day care services for the unregulated day care provider has been deter-  
11 mined under s. 48.981 (3) (c) 4 to have abused or neglected a child.

12 (c) A registration agency shall provide a receipt to each unregulated day care  
13 provider who pays a security deposit under par. (a) 6. and shall return any security  
14 deposit received when a registration is cancelled under sub. (4) (d).

15 **(4)** (a) A registration agency may revoke the registration and retain the securi-  
16 ty deposit under par. (a) 6. of an unregulated day care provider under any of the fol-  
17 lowing circumstances:

18 1. If on 2 or more occasions within the previous 5 years the unregulated day care  
19 provider has provided day care services for compensation for 4 or more children with-  
20 out a license in violation of s. 48.65.

21 2. If the county department determines under s. 48.981 (3) (c) 4. that a person  
22 residing at the premises in which the unregulated day care provider provides day  
23 care services or a person who provides day care services for the unregulated day care  
24 provider has abused or neglected a child and that person continues to reside in those  
25 premises or continues to provide those day care services.

1           3. If a person residing at the premises in which the unregulated day care pro-  
2 vider provides day care services or a person who provides day care services for the  
3 unregulated day care provider is subject to a pending criminal charge, or has been  
4 convicted of any felony, misdemeanor or other offense, the circumstances of which  
5 substantially relate to the care of children or to placing children at risk of abuse or  
6 neglect and the person continues to reside in those premises or continues to provide  
7 those day care services.

8           (b) A registration agency that is a county department shall provide the district  
9 attorney with the list specified in sub. (5) and the district attorney shall notify the  
10 registration agency if any of the circumstances specified in par. (a) arise with respect  
11 to any unregulated day care provider whose name appears on that list. A registration  
12 agency that is a private, nonprofit organization shall provide the district attorney  
13 and county department with the list specified in sub. (5) and the district attorney and  
14 county department shall notify the registration agency if any of the circumstances  
15 specified in par. (a) arise with respect to any unregulated day care provider whose  
16 name appears on that list.

17           (c) A registration agency may reregister an unregulated day care provider  
18 whose registration has been revoked if the reason specified in par. (a) for the revoca-  
19 tion has been resolved.

20           (d) An unregulated day care provider may cancel his or her registration under  
21 sub. (3) on ceasing to provide day care services; on becoming licensed under s. 48.65  
22 or 48.69, certified under s. 48.651 or established or contracted for under s. 120.13  
23 (14); or on becoming a person specified in s. 48.65 (2). On cancellation, the registra-  
24 tion authority shall refund the security deposit received from the unregulated day  
25 care provider under sub. (3) (a) 6.

1           **(5)** A registration agency shall maintain a list of all unregulated day care pro-  
2           viders who are registered with the registration agency.

3           **(6)** (a) Any unregulated day care provider who is not registered under sub. (3)  
4           may be fined not more than \$500 or imprisoned for not more than one year in the  
5           county jail or both.

6           (b) In addition to the penalties provided in par. (a), the circuit courts shall have  
7           jurisdiction to prevent and restrain by injunction any unregulated day care provider  
8           who is not registered under sub. (3) from providing day care services without being  
9           registered. On the request of a registration agency, a district attorney shall institute  
10          an action under ch. 813 for an injunction under this paragraph.

11          **SECTION 3.** 48.715 (3) (a) (intro.) and 1. of the statutes are consolidated, renum-  
12          bered 48.715 (3) (a) and amended to read:

13          48.715 **(3)** (a) A daily forfeiture amount per violation of not less than \$10 nor  
14          more than \$50. ~~All of the following apply to a forfeiture under this paragraph:1.~~  
15          Within the limits specified in this paragraph, the department may, by rule, set daily  
16          forfeiture amounts and payment deadlines based on the size and type of facility or  
17          agency and the seriousness of the violation. As part of the order, the department may  
18          set daily forfeiture amounts that increase periodically within the statutory limits if  
19          there is continued failure to comply with an order issued under sub. (2).

20          **SECTION 4.** 48.715 (3) (a) 2. of the statutes is renumbered 48.715 (3r) (a) and  
21          amended to read:

22          48.715 **(3r)** (a) The department may directly assess a forfeiture imposed under  
23          ~~this paragraph sub. (3) (a) or (3m) (a)~~ by specifying the amount of that forfeiture in  
24          the notice provided under this subsection.

1           **SECTION 5.** 48.715 (3) (a) 3. of the statutes is renumbered 48.715 (3r) (b) and  
2 amended to read:

3           48.715 **(3r)** (b) A person against whom the department has assessed a forfei-  
4 ture shall pay that forfeiture to the department within 10 days after receipt of notice  
5 of the assessment or, if that person contests that assessment under s. 48.72, within  
6 10 days after receipt of the final decision after exhaustion of administrative review  
7 or, if that person petitions for judicial review under ch. 227, within 10 days after re-  
8 ceipt of the final decision after exhaustion of judicial review. The department shall  
9 remit all forfeitures paid under this ~~subdivision~~ paragraph to the state treasurer for  
10 deposit in the school fund.

11           **SECTION 6.** 48.715 (3) (a) 4. of the statutes is renumbered 48.715 (3r) (c) and  
12 amended to read:

13           48.715 **(3r)** (c) The attorney general may bring an action in the name of the  
14 state to collect any forfeiture imposed under ~~this paragraph sub. (3) (a) or (3m) (a)~~  
15 that has not been paid as provided in ~~subd. 3 par. (b)~~. The only contestable issue in  
16 an action under this ~~subdivision~~ paragraph is whether or not the forfeiture has been  
17 paid.

18           **SECTION 7.** 48.715 (3m) of the statutes is created to read:

19           48.715 **(3m)** (a) If the department provides written notice of the grounds for a  
20 forfeiture and order under this subsection, an explanation of the amount of a forfei-  
21 ture and the type of order that may be imposed under this subsection and an explana-  
22 tion of the process for appealing a forfeiture and order imposed under this subsection,  
23 the department may impose the following forfeitures and orders against a person  
24 who fraudulently misrepresents himself or herself as being a licensee:

1           1. For a person who provides care and supervision for less than 4 children, other  
2 than the person's own children, while fraudulently misrepresenting himself or her-  
3 self as being a licensee, a forfeiture of not less than \$300 and an order that the person  
4 provide a written notice of that fraudulent misrepresentation to the parent, guard-  
5 ian or legal custodian of each child who is receiving care and supervision from that  
6 person, with copies of those notices to the department.

7           2. For a person who provides care and supervision for 4 or more children, other  
8 than the person's own children, while fraudulently misrepresenting himself or her-  
9 self as being a licensee, a forfeiture of not less than \$500 and an order that the person  
10 provide a written notice of that fraudulent misrepresentation to the parent, guard-  
11 ian or legal custodian of each child who is receiving care and supervision from that  
12 person, with copies of those notices to the department.

13           (b) The department shall refer any person who fails to comply with an order  
14 under par. (a) and any person who fraudulently misrepresents himself or herself as  
15 being a licensee on 2 or more occasions within the previous 5 years to the district at-  
16 torney of the county in which the noncompliance or fraudulent misrepresentation  
17 took place for prosecution under s. 48.76 and the institution of an injunction proceed-  
18 ing under s. 48.77.

19           **SECTION 8.** 48.715 (5) of the statutes is amended to read:

20           48.715 (5) The department may deny a license under s. 48.66 (1) or a probation-  
21 ary license under s. 48.69 to any person who has had a license under s. 48.66 (1) or  
22 a probationary license under s. 48.69 revoked within the previous 5 years or who has  
23 fraudulently misrepresented himself or herself as being a licensee within the pre-  
24 vious 5 years.

25           **SECTION 9.** 48.76 of the statutes is amended to read:

